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## DEPARTMENT OF TRANSPORTATION

## 49 CFR Part 396

[FHWA Docket No. MC-89-10]

Inspection, Repair and Maintenance;  
Periodic Motor Vehicle Inspection**AGENCY:** Federal Highway  
Administration (FHWA), DOT.**ACTION:** Notice to commercial motor  
vehicle carriers on state periodic  
inspection programs.

**SUMMARY:** On March 16, 1989, the FHWA published a notice in the Federal Register (54 FR 11020) which requested States and other interested parties to identify and/or provide any information or source materials that would describe the type of periodic inspection (PI) programs now being performed in their States for commercial motor vehicles (CMVs). In addition, the FHWA requested that all States with PI programs provide an initial assessment of whether their State programs are comparable to, or as effective as, the PI requisites contained in 49 CFR 398.15 through 396.23.

This notice provides (1) information on the process of determining the effectiveness of State programs and (2) notification of the FHWA's determination of those State PI programs which are comparable to, or as effective as, the Federal standards.

**DATE:** Docket will remain open Until further notification.

**ADDRESS:** Submit written, signed comments to the FHWA Docket No. MC-89-10, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20500. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar or the Macintosh version of Word. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert IU. Hagan, Office of Motor Carrier Standards, (202) 366-2981; or Paul L. Brennan, Office of the Chief Counsel, HCC-10, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW, Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** Section 210 of the Motor Carrier Safety Act of 1984 (the Act) Public Law 98-554, 98 Stat. 2829, 2839, required the Secretary of Transportation to establish standards for annual or more frequent inspection of CMVs, and for the retention, by motor carriers, of the records of such inspections. On December 7, 1988, the FHWA published a final rule in the Federal Register (63 FR 49402) addressing PIs which implemented the statutory requirements of the Act and amended part 396, "Inspection, Repair, and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs). That final rule requires that all CMVs operating under a motor carrier's control in interstate commerce be inspected, and meet the vehicle component standards at least once every 12 months.

This inspection is to be based on Federal inspection standards (also being added to part 396 of the FMCSRs), or a State Inspection program determined by the FHWA to be as effective as the Federal standards. Accordingly, if the FHWA determines that the State's PI program is as effective as the requirements of part 396, then a motor carrier's commercial motor vehicles required by the state to be inspected through the state's inspection program must use that program to meet the requirements of this rule. Commercial

motor vehicle inspections may be conducted: (a) By State personnel, (b) at State authorized commercial facilities, or (c) by the motor carrier itself under the auspices of a self-inspection program supervised by the State inspection authority.

If the FHWA determines that the State inspection program is not as effective as the Federal requirements then a motor carrier must ensure that the PI is Performed on all commercial motor vehicles under its control as specified in part 396. This requirement may be achieved through reliance upon alternative inspection procedures, such as: (1) Self-inspection at a carrier's facility(ies); (2) a roadside inspection; or (3) inspection at a commercial garage, fleet leasing company, truck stop, or other similar commercial business. A carrier's ability to use the commercial alternative is contingent upon the business' operating and maintaining facilities appropriate for CMV inspections and employing qualified inspectors, as required by § 396.19.

Nothing in the final rule was Intended to imply that the FHWA seeks to preempt a State from conducting PIs of CMVs, or that a State's inspection program does not improve highway safety. The FHWA believes that any inspection of a vehicle, even under programs not as effective as this rule, should contribute to the removal of unsafe vehicles from the highway.

Elsewhere published in today's Federal Register is a final rule on the subject of periodic inspection. The rule contains a revised date for implementation of the Periodic Inspection requirement, July 1, 1990. Previously, implementation was slated for December 7, 1989.

The March 16, 1989, Notice (54 FR 11020), which solicited information about existing PI programs, cited 21 States and the District of Columbia which the National Highway Traffic Safety Administration (NHTSA) had noted were performing some type of periodic inspection of passenger vehicles, small trucks, and/or commercial motor vehicles. These States are:

|               |                |
|---------------|----------------|
| Arkansas      | North Carolina |
| Delaware      | Oklahoma       |
| Hawaii        | Pennsylvania   |
| Louisiana     | Rhode Island   |
| Maine         | South Carolina |
| Massachusetts | Texas          |
| Mississippi   | Utah           |
| Missouri      | Virginia       |
| New Hampshire | Vermont        |
| New Jersey    | West Virginia  |
| New York      |                |

The NHTSA also Indicated that Programs for CMVs only are operated

by Illinois and Maryland. The FHWA asked for information that would confirm the existence and type of PI program performed in these jurisdictions.

In response to the March 16, 1989, Notice and subsequent communication with State inspection officials the FHWA received responses from all 50 States and the District of Columbia. Comments were also received from other groups; these included the New Jersey Motor Truck Association, Virginia Trucking Association, Coalition for Safer, Cleaner Vehicles ALCO Equipment Incorporated and Yellow Freight Systems, Incorporated. Respondents tended to clarify the extent of the individual State PI programs. Several State agencies with programs provided the requested assessment of program effectiveness to the FHWA and enclosed a copy of their most recent inspection guidelines for the FHWA's review.

Responses from the other groups varied from espousing the merits of a particular State's PI program to advocating further investigation and research into inspection requirements and technologies. Both the New Jersey Motor Trucking Association and the Virginia Trucking Association supported the FHWA's effort and encouraged the FHWA to approve their respective State's PI programs as equivalent to the standards contained in part 396. The Virginia Trucking Association also advocated changes to current FHWA requirements for inspection documentation kept with the truck, truck-tractor, bus or trailer.

Both ALCO Equipment and Yellow Freight cited the critical importance of qualified inspectors to the success of State PI programs. The FHWA agrees and inspection requirements were considered as a part of the FHWA's overall assessment of State PI programs.

The Coalition for Safer, Cleaner Vehicles (CSCV) presented a number of recommendations for improving the PI program. These included calls for: auditing procedures for fleet self-inspections programs that would ensure that inspectors are qualified and inspections properly performed and documented; a study of small fleet self-inspections: documenting individual vehicle inspections in a Statewide or national database (e.g., something like SAFETYNET), especially in States without equivalent PI programs; and undertaking demonstration projects to test and evaluate new inspection methods and equipment, with one possible goal being the merging of safety and emission inspections into one periodic inspection program. All the

comments received will be used in the FHWA's evaluation of the periodic and roadside inspection programs.

Using the information provided by the respondents, the FHWA compared the documentation received with the requirements of part 396 and determined the relative comparability of each State program with Federal standards. During this effort, the FHWA endeavored to assess each State's program on its own merits without drawing comparisons with those programs offered by other States.

One discovery during the review was the variety of State instructional and procedural guidelines in use. Frequently, these concentrated on providing procedural tips for inspectors on the handling of inspection equipment or manually testing various vehicle components: in some cases, to the exclusion of any language identifying deficiencies. To ensure that inspectors capture all appropriate deficiencies in the course of their inspections, these States may wish to consider adding appropriate language to their manuals that will detail the potential defects that may be found in commercial vehicle systems, as well as the methods needed to detect them.

During the assessment process, the FHWA occasionally was unable to locate sufficient documentation of certain inspection activities. When this situation occurred the FHWA endeavored to determine from alternative sources at the Federal, State and/or local level that a particular inspection criterion was, in fact, addressed and that it met the requirements of part 396. Thus, the FHWA's review was not limited strictly to the documentation received from respondents. However, if a defect or deficiency described in part 396, appendix G, was either omitted from the State PI manual or inadequately documented, and no subsequent evidence could be obtained to indicate that the activity was being carried out at a level equivalent to the Federal standard, this finding was noted for consideration in making the final determination of the relative conformance of the State's program to part 396.

On this point the majority of State inspection manuals currently do not adequately address three inspection areas described in Appendix C: "2. Coupling devices", "4. Fuel Systems", and "6. Safe Loading." The FHWA recognizes that "safe loading" is not a priority issue for review in the PIs, as most vehicles are normally checked in an unloaded condition. Nevertheless, the security of such items as the vehicle

headboard, slide rails, or other load protection devices must be reviewed to ensure the safe operation of the CMV. Likewise, with tractor and trailer connected the ability to visually check the fifth wheel plate, pintle hooks, or drawbar is restricted. The danger of failing to thoroughly check these items is self-evident and should be acknowledged through appropriate documentation in the manual. In addition, fuel system checks need better documentation to ensure the timely detection of deficiencies. The FHWA urges States to include language in their manuals to provide inspectors with appropriate criteria to adequately inspect these vehicle systems.

During its review, the FHWA weighed the presence or absence of certain inspection criteria more critically than others. For example, the absence of effective criteria for brake inspections was considered by the FHWA to be a more critical deficiency than the State's insufficient consideration of "safe loading." Thus, in determining the comparability or effectiveness of a State's PI program, the FHWA gave less weight to a State's program if its manual documented a less than an effective inspection of such CMV systems as brakes, steering, lights, tires, and suspension.

#### Determination

Based on the review of submitted documentation and discussions with various officials, the FHWA determined that the District of Columbia and the States of Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, Virginia and West Virginia have PI programs that are comparable to, or as effective as the standards outlined in part 396.

Included among those States judged as comparable to the Federal standards are those States with PI programs which are limited to a particular CMV category or type (e.g., buses only). For motor carriers State's operating CMVs that are not captured by States' limited PI program, an alternative means, such as those described above and in the December 7, 1988 final rule, must be used to satisfy PI requirements. In addition, three States with equivalent PI programs, Arkansas, Illinois and Oklahoma, apply their programs only to intrastate motor carriers. In these three States those interstate motor carriers that elect to have their vehicles inspected under the States' PI programs may avail themselves of State CMV inspection facilities and will be deemed

to have complied with the Federal requirement.

Of the above States, **Michigan, New Jersey, and New York**, have PI programs which do not cover all commercial motor vehicles. Michigan's equivalent **CMV** program covers only buses. New Jersey's equivalent **CMV** program covers only gasoline-powered vehicles. **CMVs** powered with other types of fuel (e.g. diesel, liquefied petroleum gas, etc.) are subject to self-inspection by the carrier, which is verified by either random roadside inspection or a "terminal audit" (safety review). Motor carriers with **CMVs** based in New Jersey, using fuels other than gasoline, must comply with the Federal standards through the self-inspection requirement of the State of New Jersey. In New York, the equivalent **CMV** program applies only to **CMVs** with a GVWR greater than 18,000 pounds. Motor carrier **CMVs** based in New York between 10,001 and 18,000 GVWR may use the State program or find alternate methods, as specified in the final rule, to periodically inspect their vehicle to comply with the Federal requirement. The **FHWA** has determined that the New York State periodic inspection program for buses meet the requirements of part 396.

Motor carrier with **CMVs** required to be inspected in these 12 State and the District of Columbia must satisfy their periodic inspection requirement through

the State PI programs, except where noted. In addition, Interstate motor carriers with **CMVs** based on Arkansas, Illinois and Oklahoma may elect as noted above, to use these States' PI program to meet the Federal PI requirement.

The **FHWA** has determined that all States having equivalent PI program provide documentation of successfully completed inspections through the issuance of reports, certificates, or decals. These verification documents must be readily available for identification by State roadside inspection personnel to ensure that motor carriers are properly credited with compliance with the inspection requirement. Motor carrier relying on alternative inspection procedures must similarly ensure that inspection documentation is available to the operator to either display or present to inspection personnel upon demand.

The **FHWA** has determined that all State other than those named above either have no PI program or their PI programs are not comparable to or as effective as the federal standards. Should these States wish to modify their program to be as "effective" or comparable to the Federal requirements, then the **FHWA** is ready to work with them to identify the modification(s) required. Any State wishing to be reevaluated because of the development

of a PI program or a modification of an existing program should contact the appropriate **FHWA** regional office. The addresses of these regional offices are given in part 390 of the **FMCSR**.

The **FHWA** intends to keep this docket open. If a State decides to revise its PI program and, as a result, that State's program becomes comparable to the Federal PI program, this information can be published in the **Federal Register**. The State would then be included among those State determined to have comparable or equivalent programs.

If a State decides not to change its program, or if a State does not have a PI program, motor carrier operating in those State will need to comply with the annual inspection requirements, either through program in other State or by relying on the alternative inspection option identified above.

#### List of Subjects in 49 CFR Part 396

**Highway safety.** Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 5, 1989.

T.D. Larson,

Administrator.

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